United Nations A/HRC/26/NGO/36

General Assembly

Distr.: General
4 June 2014

English only

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04148 (E)
1404148

Please recycle

The International community must address discriminatory punishment against women and girls prevailing in the world

1. Background

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) entered into force over thirty years ago. It requires state parties to ensure gender equality and end gender-based discrimination. In particular, Article 2(g) of CEDAW obliges all state parties to repeal all national penal provisions which constitute discrimination against women. Yet many states parties have failed to implement the domestic legislation and enforcement reforms necessary to comply with this obligation. As a result, women continue to face criminal sanctions of both a type and scale not experienced by men. The primary area of concern is prosecutions against women under adultery and fornication laws. Many states also have some space in their legal systems for courts based on custom. These courts worsen the situation of accused women.

Such practices seriously violate women's rights under international law and work as an effective tool to control the lives of women by the society. Human Rights Now (HRN)[1] urges the international community to immediately address this serious violation of women's human rights.

2. Adultery and Fornication Laws

In Afghanistan, rape victims are often charged with zina (sexual intercourse outside of wedlock). "...When women and girls allege rape, they are often not believed or are treated as deserving of blame of committing zina."[2] Some are forced to marry their rapists. Further, women and girls who escape from home have been routinely arrested and punished for "moral crimes" and charged with intention to commit zina, no matter the violence they have been subjected to at home. These sanctions against women continue despite the fact that escaping from home is not itself a crime under Afghan law.[3]

In Congo, local customary authorities often order rape victims to marry their attackers.[4] The law there also punishes women more harshly than men for adultery. Women who commit adultery face sentences ranging from six months to one year. Men who commit adultery, however, receive such a punishment only if the adultery is surrounded by circumstances which make it "abusive".[5] Congo does not define what makes adultery "abusive". As a result, women face jail-time while men do not for the same conduct.[6]

In the Maldives, fornication is criminally punishable by up to 100 lashes and one year of house arrest or exile.[7] Women are convicted at four or five times the rate that men are.[8] Pregnancy alone is sufficient to incriminate women.

---

[1] Human Rights Now is an international human rights NGO based in Tokyo, Japan <http://hrn.or.jp/eng>

[2] Human Rights Watch - Submission on the combined initial and second periodic report of Afghanistan to the United Nations Committee on the Elimination of Discrimination against Women (2013)
Available at:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fAFG%2f13701&Lang=en

[3] Concluding Observations on Afghanistan, CEDAW Session 55 (30 July 2013), at 7, available at
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAFG%2fCO%2f1-2&Lang=en

4 See, e.g., United Nations Human Rights Council, report of the Special Rapporteur on the independence of judges and lawyers - Mission to the Democratic Republic of the Congo (2008) (A/HRC/8/4/Add.2) at 16, available at
http://www.ohchr.org/en/countries/AfricaRegion/Pages/CDIndex.aspx ;United States Department of State, 2012 Human Rights Report - DRC at 28, available at http://www.state.gov/documents/organization/204319.pdf ;Report Submitted By The UN Special Rapporteur on Violence Against Women, Its Causes And Consequences, Takin Ertürk, On Her Mission To The Democratic Republic Of The Congo (2009) at 17, available at
http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc_7th.htm

5 FAMILY CODE ART. 467

6 Report on violence against women in North and South Kivu, in the DRC, Alternative report for the UN Committee on the elimination of all forms of discrimination against women (CEDAW), Submitted by the World Organization against Torture (OMCT) and Women's Synergy for Victims of Sexual Violence (SFVS) (2013) at 2, available at
http://www.omct.org/files/2013/07/22310/cedaw_report_drc_final_eng.pdf

7 See "Judicial statistics show 90 percent of those convicted for fornication are female,", Minivan News, October 1, 2012, http://minivannews.com/politics/judicial-statistics-show-90-percent-of-those-convicted-for-fornication-are-female-44605

8 See Hope for Women, Maldives NGO Shadow Report to CEDAW (2012), at para. 287, figures 15, 16, 17, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HopeForWomen_MaldivesForPSWG.pdf and United States Department of

Men, however, can "deny the charges and escape punishment because of the difficulty of proving fornication or adultery under Islamic law. The higher conviction rate for women allegedly [is] due to gender-insensitive judges and the courts' dismissal of forensic evidence."[9] In at least one case, an underage victim of sexual abuse was prosecuted for fornication even though the man with whom she had sex was convicted of sexual assault on a minor.[10]

The punishment for fornication in Nigeria is 100 lashes for an unmarried woman or death by stoning for a married woman.[11] In 12 Nigerian states, women who bring rape allegations can be prosecuted for fornication or adultery if the court hearing the case holds that the sex took place, but was consensual.[12] Women then can be criminally punished if they bring rape complaints and do not affirmatively prove that the sex was non-consensual. Women can also be found guilty of making "false accusations" if they bring rape complaints that do not result in conviction. For instance, if a court holds that no sex took place, the woman who brought the complaint could be found guilty. If convicted, she faces a sentence of 80 lashes.[13] There are many documented cases of women being subjected to these penalties.[14] Some women have even been found guilty of making "false accusations" without having their cases meaningfully heard.[15]

Discriminatory laws are also present in Indonesia, particularly in the province of Aceh. Laws there "restrict women's rights in the conduct of their daily life, including in social and public life; impose dress codes; restrict freedom of movement; and severely penalize alleged immoral relationships."[16] "...The policy on attire has resulted in various acts of violence including forced haircuts, the dousing of victims with paint, the cutting of trousers and verbal as well as physical sexual harassment. Currently there are even regional leaders who prohibit women from wearing trousers while accessing public facilities....Apart from lashings, [there are] also recorded cases of forced nudity, situations where the victims were forced to parade around, situations where the victims were bathed in sewage and forced marriage of couples accused of committing khalwat (lewdnes) and zina (extra-marital sex)."[17]

It has also been reported that several provisions of Yemen's Penal Code discriminate against women. Articles 273 and 275 criminalize acts of "public indecency". Women are systematically prosecuted under this particular law.[18] "Article 273 of the penal code criminalizes 'shameful' or 'immoral' acts, loosely defined as 'any act that violates public discipline or public decency,' including nudity or exposing oneself. Violations are punishable by fines of up to 1,000 riyals or as much as one year in prison. The terms 'public discipline' and 'public decency' are left to the interpretation of

---

State, Human Rights Reports 2012: Maldives [hereinafter "US Human Rights Report on Maldives"] at 5, available at http://www.state.gov/documents/organization/204616.pdf

9 US Human Rights Report on Maldives at 18

10 "Girl, 16, sentenced to 100 lashes for having sex with an older man in the Maldives," The Daily Mail, Updated September 3, 2012, http://www.dailymail.co.uk/news/article-2197732/Girl-16-sentenced-100-lashes-having-sex-older-man-Maldives.html and "HRCM to discuss case of minor sentenced to 100 lashes for fornication," Minivan News, September 4, 2012, http://minivannews.com/society/hrcm-to-discuss-case-of-minor-sentenced-to-100-lashes-for-fornication-43366

11 Because state-level Sharia codes are not readily available, this report references the Harmonised Sharia Penal Code compiled by the Centre for Islamic Legal Studies of Ahmadu Bellow University located in Zaria, Nigeria. Harmonised Sharia Penal Code §125, available at http://www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol_4_4_chapter_4_part_III.pdf See also United States Department of State, Human Rights Reports 2013: Nigeria at 5, available at http://www.state.gov/documents/organization/220358.pdf

12 Id. at §126

13 Id. at §138 and §139

14 See, e.g. Sharia Law, The Guardian, Aug. 20 2002, available at http://www.theguardian.com/world/2002/aug/20/qanda.islam It is worth noting that at least two women who were sentenced to death were able to successfully appeal their cases (See, e.g., Sharia Stoning Sentence for Nigerian Woman, Human Rights Watch, Aug. 21, 2002 http://www.hrw.org/news/2002/08/20/sharia-stoning-sentence-nigerian-woman, and Nigerian woman fights stoning, BBC News, July 8, 2002, http://news.bbc.co.uk/2/hi/africa/2116540.stm)

15 Sharia's Rise in Nigeria Incited Stoning Sentences, Women's eNews, August 25 2013, available at http://womensenews.org/story/books/130824/sharias-rise-in-nigeria-incited-stoning-sentences, "Political Shari'a"? Human Rights and Islamic Law in Northern Nigeria, Human Rights Watch (2004), at 59 available at http://www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf

16 Concluding observations on Indonesia, CEDAW Session 52 (7 August 2012), pg. 4 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIDN%2fCO%2f6-7&Lang=en

17 Indonesia National Commission on Violence against Women (Komnas Perempuan), National Human Rights Institution Independent Report Regarding the Implementation of CEDAW in Indonesia, 2007-2011at Para. 53, Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fIDN%2f52%2f9020&Lang=en

18 Concluding Observations on Yemen, CEDAW 41st Session (9 July 2008), pg. 4 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fYEM%2fCO%2f6&Lang=en

police officers and judges, subject to each region's customs and traditions. Consequently, some women have been detained simply for being alone with men who are not their relatives. Poor women or those who are members of marginalized groups, such as the Akhdam or Somali and Ethiopian refugees, are more likely to be detained or arbitrarily arrested on such grounds."[19]

Pakistan's criminal code similarly discriminates against women, by according their testimony only half the weight of a man's.[20]

3. Recommendations

Many states have yet to implement the legislative and administrative reforms necessary to meet their obligations under CEDAW and other international human rights norms. In these states, the discriminatory laws and practices in question severely deter women's empowerment, women's human rights, and women's access to justice. Such laws and practices significantly contribute to the embedded culture of impunity surrounding violence against women.

Human Rights Now (HRN) urges all states to seriously review and repeal all discriminative laws and practices causing legal and de facto sanction against women and girl. The international community should play an active role and take concrete steps to repeal all discriminative laws and practices against women and girl. HRN calls on both the Working Group on the issue of discrimination against women in law and in practice and the Special Rapporteur on violence against women, its causes and consequences to investigate these states' discrimination against women. Additionally, we urge the Human Rights Council and General Assembly to pass resolutions to address this particular matter.

---

19 Manea, Elham. "Yemen." Ed. Sanja Kelly and Julia Breslin. Women's Rights in the Middle East and North Africa: Progress amid Resistance. New York: Freedom House, 2010. Page 5 of the "Yemen" chapter. Available at: http://www.freedomhouse.org/sites/default/files/inline_images/Yemen.pdf See also "Women of Yemen - the taboo of sexual harassment" THE YEMEN POST 27 February 2013 available at: http://yemenpost.net/Detail123456789.aspx?ID=3&SubID=6615&MainCat=5

20 To Be a Woman in Pakistan, THE EXPRESS TRIBUNE WITH THE INTERNATIONAL NEW YORK TIMES, November 26, 2012, http://tribune.com.pk/story/471197/to-be-a-woman-in-pakistan/, Legal empowerment of Women in Pakistan, SACHET PAKISTAN available at http://www.sachet.org.pk/web/page.asp?id=632